

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 1821 of 2007()

CC.336/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM
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PETITIONER/ ACCUSED NO.1:

R. MOHANA KUMARAN NAIR,
T.C.4/1297, GNRA - 50,
PENTAGON LANE, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.N.HARI KUMAR
SRI.K.RAJESH KANNAN

RESPONDENTS/COMPLAINANT & STATE:

1. K. LALITHA BAI,
T.C.4/1293 (1),
'KARTHI',
KOWDIAR VILLAGE, THIRUVANANTHAPURAM.
2. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1821 of 2007

Dated this the 6th day of June 2007

O R D E R

The petitioner is the first accused in a prosecution interalia under Section 440 I.P.C. The first respondent is the complainant. The complainant initially filed a complaint before the learned Magistrate. That was referred to the police under Section 156(3) Cr.P.C. The police, after investigation, submitted a refer report before the learned Magistrate. On coming to know that, the complainant filed a protest complaint. On the protest complaint, following the procedure prescribed by law, cognizance has now been taken against the petitioner and two others.

2. The petitioner is aggrieved by the conduct of the learned Magistrate taking cognizance. The learned counsel for the petitioner contends that the cognizance taken against the petitioner is wrong and is liable to be interfered with invoking the powers under Section 482 Cr.P.C.

3. What are the grounds? The learned counsel for the petitioner, first of all, contends that the allegations raised are incorrect and false. Secondly, it is contended that the police have, after due investigation, reported to the learned Magistrate that no cognizance need be taken. These are the two grounds on which the learned counsel for the petitioner prays that the proceedings may be quashed.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. It is an extraordinary inherent jurisdiction which I am called upon to invoke and exercise. Such jurisdiction is to be invoked sparingly and in exceptional cases, that too in aid of justice only. Such jurisdiction cannot be invoked, as a matter of course. Normally any person, who feels that the prosecution instituted against him on the basis of a private complaint is unjust and unsustainable, must raise his contention and claim discharge under Section 245 (1) or if so advised, earlier under Section 245(2) Cr.P.C. The mere fact that an accused may be entitled for premature termination of proceedings by discharge under Section 245(1) or 245(2) Cr.P.C, is no reason for this court to invoke the

extraordinary inherent jurisdiction. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations or the credibility of the data. Suffice it to say that I find no reason which can justify or warrant invocation of such extraordinary jurisdiction. The petitioner must resort to the normal and ordinary course of claiming discharge under Section 245(1) or 245(2) Cr.P.C or acquittal, later in the course of the trial. I find no reason to prematurely terminate the proceedings by invoking the powers under Section 482 Cr.P.C at this stage.

5. Needless to say, the learned Magistrate need not unnecessarily insist on the personal presence of the petitioner on all dates of posting. He can apply for exemption from personal presence until the question of discharge is considered.

6. This Criminal Miscellaneous Case is dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007